In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 994

SHIRELEY JEAN ESTES; LISHA DAWN ESTES; SHAWNA ANNETTE ESTES AND DAVID LAIRD ESTES, PETITIONERS

v.

CAMDEN FIRE INSURANCE ASSOCIATION OF GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LIMITED; STATE AUTOMOBILE MUTUAL INSURANCE COMPANY; FRANK M. GUSWEILER; STATE OF OHIO AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. This action apparently stemmed from two automobile accidents in which petitioner Shireley Jean Estes was injured as the result of the alleged negligence of individuals to whom the respondent insurance

companies had issued automobile liability policies. Insofar as the United States is alleged to be involved, the gravamen of the complaint appears to be that the Attorney General has been abiding by the Ferguson-McCarran Act, 15 U.S.C. 1011-1015, which leaves the regulation of the insurance industry to the individual states.[1] Petitioners contend that this Act is unconstitutional because it stands "in the path of proper control and supervision of the interstate insurance business which can only be governed constitutionally by the Federal Government * * *" (Pet. 17). The action was dismissed by the district court as to all defendants for failure to state a claim on which relief could be granted (Pet. App. B), and the court of appeals affirmed *per curiam* (Pet. App. C).

2. There is no warrant for further review of petitioners' claims against the United States. Since at

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[1] The Act provides in part:

§ 1011. *Declaration of policy.*

Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

§ 1012. *Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948.*

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

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least *Paul* v. *Virginia*, 8 Wall. 168, it has been consistently recognized that the regulation of insurance is a permissible state activity. *Wilburn Boat Co.* v. *Fireman's Insurance Co.*, 348 U.S. 310. Although the interstate aspects of the insurance business could be subjected to federal regulation under the Commerce Clause (*United States* v. *South-Eastern Underwriters Assn.*, 322 U.S. 533), there is obviously no constitutional requirement that Congress impose such regulation.

Respectfully submitted,

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1968.

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